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November 13, 2001

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Andrew Stephens
Director of Steel Trade Policy
600 17th Street, N.W.
Washington, DC 20508

Re: Request for Exclusion: Stainless Steel Wire (Product 11) from Canada

Dear Mr. Stephens:

On behalf of Canadian stainless steel wire producers Central Wire Industries Ltd. and Greening Donald Co. Ltd. ("the Canadian stainless wire producers"), we hereby make the following submission in accordance with the Office of the U.S. Trade Representative's Notice of Request for Public Comments on Potential Action Under Section 203 of the Trade Act With Regard to Imports of Certain Steel, 66 Fed. Reg. 54321 (Oct. 21, 2001). We respectfully request that the president exempt Canadian stainless steel wire producers from any restraints that the president may impose against imports of this product from other countries. More importantly, whatever action the president may take, he must make it clear that imports of stainless steel wire which has been drawn in Canada should be classified as Canadian wire for purposes of implementing the restrictions imposed under section 201 of the Trade Act of 1974. A detailed discussion of our exclusion request follows this cover letter.

Respectfully submitted,

Christopher Dunn

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## I. THE PRESIDENT MUST EXEMPT CANADIAN STAINLESS WIRE BECAUSE THE INTERNATIONAL TRADE COMMISSION HAS UNANIMOUSLY DETERMINED THAT CANADIAN STEEL WIRE IS NOT INJURING THE US INDUSTRY.

The US International Trade Commission ("ITC") unanimously determined that imports of stainless steel wire from Canada are not injuring the US industry. In the Commission's vote, three commissioners found that imports of stainless steel wire from all countries were not a substantial cause of serious injury to the US industry. Of the three commissioners who found injury, however, all three commissioners found that imports of Canadian stainless wire were not "contributing importantly" to injury. Hence, all six commissioners have found in the negative with respect to stainless steel wire from Canada.

The reasons underlying the commissioners' determinations have not yet been made public. However, the record is clear that imports of Canadian stainless wire could not have been contributing importantly to any injury the US industry may have sustained. Pursuant to 19 U.S.C.§3371(b)(2), imports from a NAFTA country do not normally contribute importantly to serious injury "if the growth rate of imports from such country or countries during the period in which an injurious increase in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period."

Confidential data reported to the ITC show that over the period of investigation, total imports of stainless wire increased during the period of investigation, while imports from Canada declined. While we cannot provide these data to the USTR in this submission, we understand that they are available to the USTR upon request. These data make clear that the growth rate of imports from Canada is "appreciably lower than the growth rate of total imports from all sources."

In short, the president must follow the unanimous determination of the ITC and rule that imports of stainless steel wire are not contributing importantly to any injury the US industry may have experienced. Pursuant to 19 U.S.C.§3372(b), the president must therefore exclude all imports of Canadian stainless wire from any restrictions he may otherwise impose on stainless steel wire imports.

## II. WHATEVER OTHER ACTION THE PRESIDENT MAY TAKE, HE MUST MAKE CLEAR THAT STAINLESS WIRE DRAWN IN CANADA IS TO BE CONSIDERED CANADIAN WIRE FOR PURPOSES OF SECTION 201 RESTRICTIONS.

Should the president determine to impose restrictions on the importation of stainless steel wire from other countries, it is essential that his order imposing such restrictions make one point absolutely clear: wire that has been drawn in Canada must be considered Canadian wire for purposes of these restraints. This determination is equally critical whether the president imposes restraints in the form of quotas, tariffs or tariff-rate quotas.

Canadian stainless steel wire is subject to a peculiar, perhaps unique set of circumstances under US Customs country-of-origin and marking rules. Under the country-of-origin and marking rules promulgated pursuant to NAFTA, wire manufactured in a NAFTA country is not considered to be "substantially transformed" by virtue of the wire drawing process; rather, it takes as its country of origin the country where the wire rod is produced.[1] However, in the case of Canadian stainless wire, there are no Canadian producers of stainless wire rod. This means that with one limited exception[2], all wire drawn in Canada is declared as wire from the country where the rod is produced. Canadian wire drawn, for example, from Swedish stainless wire rod, is declared as Swedish wire when it enters the US, even though it is drawn in Canada.

If the president were to impose restrictions on imports from other countries pursuant to section 201 of the Trade Act of 1974 without specifically providing that wire drawn is Canada is to be considered Canadian wire, the application of these Customs rules would create chaos in the administration of the restrictions, and would deprive Canada of the benefits it is entitled to under NAFTA. This is true whether restrictions are applied in the form of quotas, tariffs or tariff rate quotas.

In the case of quotas, since imports of stainless wire from Canada would be classified as imports from third countries subject to quotas, they would count against the quotas applicable to those countries. This would be true whether the president established a first-come, first-served quota or a quota allocated to specific countries. In either case, foreign producers would be unable to police their shipments to the US under the quota, because they would find their quota reduced by Canadian shipments beyond their control. Their most likely reaction would be to cease exports of wire rod to Canada entirely, in order to be able to capture the higher value-added benefits of exporting stainless wire directly to the US. Canadian producers could, as a result, find themselves without any raw material to manufacture their stainless wire, and their very existence would be threatened.

Canadian producers would be similarly jeopardized if the president were to impose a supplemental tariff on wire. Since Canadian wire made from non-NAFTA rod would be classified as non-NAFTA wire, it would, absent any other provision, be subject to the additional tariffs applicable to non-NAFTA countries. This would mean that the Commission's vote -- that imports of Canadian stainless wire imports did not "contribute importantly" to injury -- would effectively be nullified.[3] Canadian stainless wire

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[1] North American Free Trade Agreement Annex 401, Section XV, Chapter 72. Wire classified under tariff item 7223 takes the country of origin where it is produced unless the change in classification is from wire rod (item 7221).

[2] The exception is wire drawn in Canada from rod produced in the US. Under a Customs regulation known as the "NAFTA preference override", if wire is drawn in Canada from rod produced in the US, it is to be declared as Canadian wire. 19 C.F.R.§102.19(b). This accounts for only a few hundred tons of stainless wire each year, the amount appearing on US Customs statistics as imports of stainless steel wire from Canada.

[3] The rationales for the Commissioners' decision that imports of Canadian steel wire did not "contribute importantly" to injury have not yet been published. However, the Canadian stainless wire

producers would thus be deprived of the benefits to which they are entitled under 19 U.S.C. §§3371(b)(2) and 3372(b).

There is a simple way for the president to avoid these unwarranted and unintended results. The president should make clear, in any proclamation he issues pursuant to this proceeding, that wire drawn in Canada is to be considered as Canadian wire. The following statement should be sufficient:

> Regardless of the country-of-origin treatment provided under Customs regulations and NAFTA rules, stainless steel wire drawn in Canada shall be treated as stainless steel wire from Canada for purposes of the application of the provisions of this proclamation.

By applying such a rule, the president can assure that any remedy he may apply can be properly administered without depriving Canadian stainless wire producers of the benefits to which they are entitled under 19 U.S.C.§3372(b).

## III. OTHER INFORMATION PROVIDED PURSUANT TO TPSC NOTICE.

Pursuant to the notice published in the Federal Register on October 21, 2001 (66 Fed. Reg. 54321), we provide the following information:

- The commercial name of the product and the HTS number under which the product enters the US: **stainless steel wire, HTSUS number 7223.**

- The names and locations of any producers, in the United States and foreign countries, of the products. The only producers of stainless steel wire in Canada are Central Wire Industries, Ltd., 1 North Street, Perth, Ontario, K7H 2S2, and Greening Donald Co. Ltd., 1 Erinville Drive, Erin, Ontario N0B 1T0. We are unable to provide the names and addresses of all producers of stainless steel wire producers in the US and other foreign countries.

- The basis for requesting an exclusion. Stainless steel wire drawn in Canada should be excluded from any remedy because the USITC has unanimously found imports from Canada not to be "contributing importantly" to any injury that the US industry may be experiencing. Facts and arguments in support of this conclusion have been set forth in detail in the preceding sections of this submission.

- Total US consumption of the product, by quantity and value for each year from 1996 through 2000. This information is available in Table

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producers have repeatedly, throughout the investigation, pointed out the anomaly to the Commissioners and have reported the actual imports of Canadian-drawn wire, regardless of US Customs statistics. Thus, we believe that the Commissioners' determinations are based on imports of stainless wire <u>drawn</u> in Canada rather than of wire reported in the Customs statistics as being of Canadian origin.

STAINLESS-C-7 of the US International Trade Commission Staff Report in Investigation No. TA-201-73. However, since that information is confidential and subject to administrative protective order, we cannot provide it in this submission.

- Total US production of the product for each year from 1996 to 2000. This information is also available in the USITC Staff Report but, as it is equally confidential information subject to administrative protective order, we cannot provide it with this submission.

- The identity of any US-produced substitute for this product. As far as we are aware, there is no product that is fully substitutable for stainless steel wire. In some very limited instances, carbon steel wire, nylon wire and other wires might be considered substitutable, but we do not consider them to be substitutable as a general matter.

## IV. CONCLUSION.

The president should follow the unanimous ruling of the ITC and find that imports of stainless steel wire should be exempted from any remedy he might otherwise impose on stainless steel wire. In order to secure this exemption, the president must make clear that all stainless wire drawn in Canada is to be considered stainless steel wire for purposes of the remedy.

Respectfully submitted,

Christopher Dunn
Willkie Farr & Gallagher

Kay C. Georgi
Coudert Brothers

on behalf of:

Central Wire Industries, Ltd.
Greening Donald Co. Ltd.